

From Sen. Moolenaar's  
Office

**SENATE BILL No. 1000**

Introduced March 1, 2013 by Senators MOOLENAAR, GREEN, BRANDENBURG,  
SCHUITMAKER, MARLEAU, JANSEN, COLBECK and WALKER and referred to the  
Committee on Judiciary.

**DECLARATION OF KRISTINE  
UHLMAN / UMHANI**

I, **KRISTINE UHLMAN**, have been asked to provide a statement in  
support of an amendment to the Michigan "Child Custody Act of  
1970", specifically item:

(9) A PARENTING TIME ORDER SHALL CONTAIN A PROHIBITION ON  
EXERCISING PARENTING TIME IN A COUNTRY THAT IS NOT A PARTY  
TO THE HAGUE CONVENTION ON THE CIVIL ASPECTS OF  
INTERNATIONAL CHILD ABDUCTION.

Most of the countries that are not signatory to the Hague  
Convention follow Shari'a (Islamic) family law and tradition,  
and include (but are not limited to) Pakistan, the Arab  
countries of the Middle East, Iran, Palestine, several  
countries in north and central Africa, and Malaysia. Parenting  
time orders that allow children to be taken into these Non-  
Hague countries increase the risk that the child will not be  
returned to the United States.

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2 1. I AM ABLE TO PROVIDE THIS STATEMENT because of my  
3 training in Islamic law and customs as they relate to parent's  
4 rights, marriage, divorce, and child custody; the research I  
5 have conducted to support my publications and workshops; and,  
6 the direct experience I have gained in working with custodial  
7 parents trying to recover children held in non-Hague countries.  
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10 I have been qualified and presented court testimony as an  
11 expert witness in 17 states across the United States; I have  
12 been contracted by both the US Department of State and the  
13 National Center for Missing and Exploited Children (NCMEC -  
14 Washington, DC) to provide expert advise and training; and, I  
15 have conducted continuing education training workshops for the  
16 International Law Division of the California State Bar, the  
17 California District Attorneys Association, and the California  
18 Association of Certified Family Law Specialists. I am the  
19 author of the following published articles: Uhlman, K., *Islamic*  
20 *Marriage Contracts*. Family Law News. State Bar of California  
21 Family Law Section, Issue 3, 2005. Vol. 27, No. 3, pp.9-26;  
22 Uhlman, K., *International Custody Abduction to the Non-Hague,*  
23 *Islamic Countries*. Family Law News, Official Publication of  
24 the State Bar of California Family Law Section, Issue 4, 2004 /  
25 Vol. 26, NO. 4. pp 21-24; Uhlman, K., *Overview of Shari'a and*  
26 *Prevalent Customs in Islamic Societies: Divorce and Child*  
27 *Custody*. 2004 International Law / Family Law Winter Section  
28

1 Education Institute Publication, January 2004; Uhlman, K.,  
2 *Custody Abduction Risk Factors Unique to the Islamic Countries.*  
3 The California International Practitioner, Journal of the  
4 International Law Section of the California State Bar. Vol.  
5 11, No. 2, 2001-2002. pp.38-44; and, Uhlman, K., *International*  
6 *Custody Abduction into the Islamic World.* Association of  
7 Certified Family Law Specialists 'ACFLS' Newsletter, Winter  
8 2000, No. 4, pp. 11- 13. In addition, my publication *Islamic*  
9 *Shari'a Contracts: Pre-Nuptial and Custody Protections*, co-  
10 authored with California attorney Elisa Kisselburg, was printed  
11 for workshop distribution at the 2007 Annual Meeting by the  
12 California State Bar. The publication is posted at  
13 www.UmHani.com.  
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16 2. **SHARI'A LAW** (Islamic Law) is derived from four  
17 principal sources: the Quran, the *Sunna* (practice, conduct, and  
18 traditions of the Prophet), the *ijma* (scholastic opinion), and  
19 *qiyas* (analytical interpretation). The main source of Shari'a'  
20 is the Quran. Considered the direct word of God, the Quran  
21 states that the only distinction between men and women is in  
22 their marriage - as every unit must have a leader, the male is  
23 seen as the leader of the family unit. This is the only  
24 statement within the Quran that differentiates the status  
25 between men and women. This gender ranking, however, has  
26 reverberated throughout all aspects of Islamic culture and law,  
27 and traditional Islamic societies have evolved to presume the  
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1 legal status of women is less than that of a man. Because of  
2 this, it is generally true that in the Islamic social system  
3 the husband has the final authority over the wife, the father  
4 over his daughter, and the (grown) son over his mother. In  
5 addition, the father's authority over the children of a  
6 marriage supersedes that of the mother.

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8 3. IN ISLAMIC LAW, AFTER DIVORCE A MOTHER GENRALLY HAS A  
9 RIGHT TO PHYSICAL, NOT LEGAL, CUSTODY OF HER CHILD until the  
10 child reaches the age of custodial transfer (generally around  
11 the age of 7, sometimes to the age of 12 for a girl-child), at  
12 which time the child is returned to the physical custody of the  
13 child's father or the father's family. The right to physical  
14 custody of a young child is not an absolute right in the sense  
15 that a father can challenge the mother's ability to provide an  
16 appropriate upbringing if the father asserts the mother has  
17 dishonored the family or has been disobedient.

18  
19 Under Shari'a law, a father is the natural guardian (*al*  
20 *waley*) of his children's persons and property. The father  
21 always retains the right to determine where the child where  
22 live and whether the mother may travel with the child. From my  
23 experience with children abducted to Non-Hague countries, the  
24 father need not be Muslim to have Shari'a law enforce his  
25 Islamic right to legal custody.

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27 4. SHARI'A COURTS OF NON-HAGUE COUNTRIES DO NOT RECOGNIZE  
28 CUSTODY ORDERS OR PARENTING PLANS OBTAINED IN SECULAR COURTS OF

1 **LAW.** Orders originating from Michigan, or any American court,  
2 are not recognized and will not be enforced by the Non-Hague,  
3 Islamic countries. In addition, were parents to dispute  
4 custody or parenting time while in an Islamic Non-Hague  
5 country, Islamic law will prevail.  
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8 5. **NON-HAGUE, ISLAMIC COUNTRIES DO NOT RECOGNIZE LAW OR**  
9 **CONTRACTS THAT ARE AGAINST ISLAMIC PRINCIPLES OR ARE**  
10 **CONTRAINDICATED BY SHARI'A LAW.** For example, Islamic law  
11 prohibits legal custody of a child by a mother and prohibits a  
12 mother's right of physical custody if challenged by the father.  
13 An order providing joint legal and physical custody would be in  
14 violation of Islamic principles.  
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17 6. Because of the gender-based custody and divorce laws,  
18 and the lack of recognition of foreign secular, non-Islamic  
19 family court decisions, **THERE ARE NO LEGAL PROCESSES THAT WOULD**  
20 **ENFORCE THE RETURN** of a minor child if held in a Non-Hague  
21 country. If the court allows parenting time in a Non-Hague  
22 country, there is no means by which the return of the child can  
23 be assured.  
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26 7. **THE RISK OF UNLAWFUL RETENTION IN A NON-HAGUE,**  
27 **ISLAMIC COUNTRY CAN BE UNDERSTOOD AS A FUNCTION OF LIKELIHOOD**  
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1 **AND REMEDY.** There is no legal remedy, no process, and no legal  
2 authority to order the return of an abducted child to the United  
3 States. There are no bi-lateral agreements between the United  
4 States and any Islamic country that addresses the return of an  
5 abducted child. The only legal authority recognized in the Non-  
6 Hague Islamic countries is Islamic Family Law.  
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9 8. **WITH NO REMEDY AVAILABLE TO RETURN AN ABDUCTED CHILD**  
10 **TO THE UNITED STATES, THE LIKELIHOOD OF ABDUCTION CARRIES**  
11 **GREATER WEIGHT WHEN ASSESSING THE RISK.** The age and gender of  
12 the child contributes to the determination of the risk of  
13 retention in a Non-Hague country. In Islam, it is believed that  
14 when a man faces Judgment Day he is judged on his responsibility  
15 to maintain the honor of the women in his family. This  
16 responsibility extends to his mother, sisters, and daughters,  
17 but does not necessarily include his wife. The religious  
18 obligation to protect the honor of a man's daughter has been  
19 used as an explanation as to why the majority of custodial  
20 kidnappings to the Non-Hague countries are of daughters. The  
21 concern over a young daughter being exposed to an un-Islamic  
22 upbringing has been cited by several successful abductors.  
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25 Another observation of past abductions to the Non-  
26 Hague countries is the age of the child. Recognizing the  
27 Islamic right of the mother to hold physical custody to nurture  
28 a young child, abductions most often occur as the child

1 approaches the age of custodial transfer. Fathers understand  
2 their religious obligation to educate their children as to their  
3 religious responsibilities, and tradition holds that  
4 responsibility is realized once the child is transferred to the  
5 father's physical custody. There have been numerous cases of  
6 custody abduction after years of uneventful, unsupervised  
7 visitation of very young children, even unsupervised visits to  
8 extended family in Non-Hague countries. Often these abductions  
9 occurred because of pressure from the extended family to 'do  
10 what is right' for the child by returning the child to the  
11 traditions and culture of the family.  
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14 Based on my personal observations and anecdotal evidence,  
15 the most commonly abducted child to a Non-Hague country is a 5-  
16 year old girl. Boys are often abducted with their sister, but  
17 when they are the sole target of a custody abduction or unlawful  
18 retention they are taken between the age of ten to twelve.  
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21 9. INTERPOL 'FLAGS' AND NOTIFICATIONS OF MISSING  
22 CHILDREN OR CUSTODY VIOLATIONS ARE NOT ENFORCED IN NON-HAGUE  
23 COUNTRIES. It has been my personal observation that fathers who  
24 refuse to return a child from a parenting time visitation in an  
25 Islamic, Non-Hague jurisdiction have not faced any repercussion.  
26 Local police determine the extent to which they recognize an  
27 arrest warrant, for example, from an outside jurisdiction.  
28 Extradition for kidnapping has never occurred from a Non-Hague

1 country because the law and traditions of Islamic, family law  
2 enforces the right of the father to determine where his children  
3 shall reside. My personal experience has been that American  
4 citizens have not lost their work permit or visas within an  
5 Islamic country when they refuse to comply with an American  
6 order to return their children. Foreign nationals or dual  
7 nationals are protected by the Islamic laws and traditions of  
8 their home state when challenged by a competing American order  
9 concerning their children.  
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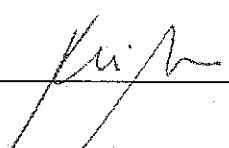
11  
12 10. THE ONLY PROTECTIVE MEASURE TO REDUCE THE RISK OF  
13 ABDUCTION OF A CHILD IS TO PROHIBITE PARENTING TIME IN A COUNTRY  
14 THAT IS NOT A PARTY TO THE HAGUE CONVENTION ON THE CIVIL ASPECTS  
15 OF INTERNATIONAL CHILD ABDUCTION. Other protective measures  
16 would include prohibiting the removal of a child from the  
17 jurisdiction of the court (including travel to or parenting time  
18 in the Hague countries), with the restriction stated in the  
19 final custody/visitation order so as to facilitate enforcement  
20 action. In addition, the non-custodial parent should be  
21 prohibited from applying for a passport for the child, or from  
22 obtaining duplicate passports. It should be noted that there is  
23 no mechanism by which a foreign embassy would be obligated to  
24 reveal if a passport has been issued for a dual-national  
25 American child.  
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11. AN AVERAGE OF ONE CHILD PER WEEK IS ABDUCTED TO A  
NON-HAGUE COUNTRY IN DIRECT VIOLATION OF AN AMERICAN CUSTODY  
ORDER. Abduction of a child is a too frequent occurrence, with  
statistics from the US Department of State, Office of Children's  
Issues indicating the incidence of custody abductions to  
approach approximately one dual-national American child a week.  
Return of an abducted child through litigation in the Islamic,  
Shari'a courts, has never been achieved. Unpublished data from  
the US Department of State and the undersigned's own experience,  
suggest that only approximately 3% of taking parents are  
mothers. Because the majority of the abductions are by fathers,  
it is important to understand the gender-based cultural and  
religious expectation of the father to always retain legal  
custody in assessing risk.

I declare, under penalty of perjury, under the laws of the  
State of Michigan that the foregoing is true and correct.

Executed on this 24<sup>th</sup> day of September, 2012 at  
SAN ANTONIO, TEXAS.

  
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Kristine Uhlman / UmHani